

There is a lack of discussion why the claims should be broadened as set forth in claims 11, 23, 26 and 27 and where the claims are justified in the specification.

The above statement by the applicant does not clearly describe how the error was discovered and who discovered the error.

We respectfully disagree that the declaration filed with the application is defective for the reasons given by the Examiner, because the declaration clearly meets the criteria set forth in 37 CFR 1.175 and the relevant sections of the Manual of Patent Examination and Procedure (MPEP). Specifically, we turn first to the Examiner's reasoning that the declaration failed to identify the errors relied upon and how they arose, insofar as the declaration merely recited that the claims as issued are too narrow given the breadth of the disclosure in the specification and that this was the result of our patent attorney's failure to appreciate the full scope of the invention. As set forth in the MPEP at §1402, "[t]he most common bases for filing a reissue application are: (A) the claims are too narrow or too broad. . . ." That section also states: "An attorney's failure to appreciate the full scope of the invention was held to be an error correctable through reissue in In re Wilder, 736 F.2d 1516, 22 USPQ 369 (Fed. Cir. 1984)." As the Examiner noted, we have provided verbatim statements to this effect in the declaration. Thus, our declaration identifies the errors relied upon in the manner specifically indicated as acceptable in the MPEP.

The Examiner also objected that there is a lack of discussion why the claims should be broadened and where the claims are justified in the specification. As set forth in the MPEP at §1414(I), the requirement of 37 CFR 1.175(a)(1) is satisfied where the declaration states that the "applicant believes the original patent to be partly inoperative or invalid by reason of the patentee claiming more or less than patentee had the right to claim in the patent." On page 2 of our declaration, first full paragraph, this language is stated verbatim. The MPEP at §1414(I) also indicates that such assertion "will be sufficient to satisfy this requirement without any further statement." There is no additional requirement that the declaration contain a discussion of why the claims should be broadened or where the claims are justified in the specification. Consequently, our

declaration meets the criteria set forth in the Code of Federal Regulations and the Manual of Patent Examination and Procedure, and nothing further is required.

Lastly, the Examiner found our declaration defective on the grounds that it did not clearly describe how the error was discovered and who discovered the error. We immediately note MPEP at §1414(II): "It is not necessary, however, to point out how (or when) the error arose or occurred. Further it is not necessary to point out how (or when) the error was discovered. . . . All that is needed for the oath/declaration statement as to error is the identification of 'at least one error'." As discussed above, the declaration describes at least one error that, according to the rules, is explicitly adequate to justify reissue and is identified in a manner that is explicitly acceptable.

In light of the above, we believe that our declaration as filed with the reissue application is not defective but meets all of the requirements of such declarations, and nothing further is necessary. Consequently, the objection to the declaration should be withdrawn.

Claims 11-27 are rejected as being based upon a defective reissue declaration. However, because the declaration is not defective this rejection should also be withdrawn.

This reissue application is believed to be in condition for allowance, and notice to that effect is earnestly solicited. If the Examiner has any further inquiries about the issues discussed hereinabove, or any other issue relating to this application, he is invited to contact Applicants' representative, the undersigned, at (301) 924-9600.

Respectfully submitted,



Marlana K. Titus

Reg. No. 35,843

Nash & Titus, LLC  
3415 Brookeville Road  
Suite 1000  
Brookeville, MD 20833  
(301) 924-9600

Atty Docket No. ARMY 104